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## Attorneys for Federal Defendants

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

COALITION OF ARIZONA/NEW MEXICO ) No. 1:07-cv-00876-JEC-WPL  
COUNTIES FOR STABLE ECONOMIC GROWTH, )  
et al., )

## Plaintiffs.

V<sub>1</sub>

KENNETH SALAZAR, in his official capacity as Secretary of the Interior; ROWAN GOULD, in his official capacity as Acting Director of the Fish and Wildlife Service; UNITED STATES DEPARTMENT OF THE INTERIOR; UNITED STATES FISH AND WILDLIFE SERVICE.<sup>1/</sup>

**FEDERAL DEFENDANTS'  
MOTION FOR  
VOLUNTARY REMAND**

## Defendants

## CENTER FOR BIOLOGICAL DIVERSITY.

### Defendant-Intervenor.

CENTER FOR BIOLOGICAL DIVERSITY

Plaintiff.

V<sub>1</sub>

No. 1:08-cv-00657-JEC-WPL

<sup>1</sup> The captions have been altered to reflect the new Secretary of the Interior and the Acting Director of the Fish and Wildlife Service. See Fed. R. Civ. Pro. 25(d).

KENNETH SALAZAR, in his official capacity as Secretary of the Interior; ROWAN GOULD, in his official capacity as Acting Director of the Fish and Wildlife Service; UNITED STATES DEPARTMENT OF THE INTERIOR; UNITES STATES FISH AND WILDLIFE SERVICE,

Defendants,

COALITION FOR ARIZONA/NEW MEXICO COUNTIES FOR STABLE ECONOMIC GROWTH and NEW MEXICO CATTLE GROWERS' ASSOCIATION,

Defendant-Intervenors.

Federal Defendants Kenneth Salazar, Rowan Gould, the United States Department of the Interior and the United States Fish and Wildlife Service (collectively the "Federal Defendants") hereby move this Court for a voluntary remand of the final rule entitled *Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Spikedace (Meda fulgida) and the Loach Minnow (Tiaroga cobitis)*, 72 Fed. Reg. 13356 (Mar. 21, 2007) ("Final Rule") in order to reconsider the rule in light of an investigative report that was recently issued by the Department of the Interior's Inspector General entitled "The Endangered Species Act and the Conflict between Science and Policy." As explained in the accompanying memorandum, the ability to remand the Final Rule lies well within the Court's equitable powers. On remand, the United States Fish and Wildlife Service intends to conduct further rulemaking and render new determinations regarding critical habitat for the Spikedace and the Loach Minnow.

Pursuant to Local Rule 7.1(a), Federal Defendants consulted with the parties in the above-captioned cases in order to ascertain their respective positions on Federal Defendants' Motion for Voluntary Remand. Plaintiff/Intervenor Center for Biological Diversity ("CBD") stated that it does not oppose Federal Defendants' motion. Plaintiffs/Defendant-Intervenors Coalition of

1 Arizona/New Mexico Counties for Stable Economic Growth and the New Mexico Cattle Growers'  
2 Association ("Cattle Growers") stated that while they took no position on the appropriateness of  
3 remand at this time, they oppose a remand without vacatur.

4 Federal Defendants ask that the Court grant their Motion for Voluntary Remand for the  
5 reasons set forth in the accompanying memorandum.

6  
7 Respectfully submitted this February 2, 2009.

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9 JOHN C. CRUDEN  
10 Acting Assistant Attorney General  
11 JEAN E. WILLIAMS, Chief  
LISA L. RUSSELL, Assistant Chief

12 /s/ Erik E. Petersen  
13 ERIK E. PETERSEN, Trial Attorney  
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26 Attorneys for Federal Defendants

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 2<sup>nd</sup> day of February, 2009, I electronically filed the foregoing with the Clerk of the U.S. District Court of New Mexico using the CM/ECF system, which will send a Notice of Electronic filing to the counsel of record.

/s/ Erik E. Petersen

ERIK E. PETERSEN

*Counsel for Federal Defendants*